

Application No. 10/597,800
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Amendment dated December 16, 2009

REMARKS

Claims 1-54 were pending in this application.

Applicants have herein cancelled without prejudice

Claims 2-3 and amended Claims 1, 27 and 46-48.

Accordingly, Claims 1 and 4-54 are presented herein for prosecution, with Claims 1, 27 and 46-48 being presented in independent form.

Applicants turn to the substance of the Action.

Section 102 Rejections

Claims 1-16 and 18-54 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,379,927 (Montenieri) for the reasons given at page 2, paragraph 3 of the Action.

Applicants' cancellation of Claims 2 and 3 renders moot the Section 102(b) rejections thereof. Applicants traverse the Section 102(b) rejections.

As the Examiner is aware, the invention as defined for instance with reference to Claim 1 is directed to a dispensing nozzle comprising:

(i) an elongate nozzle body having a base portion and a dispensing end;

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(ii) an internal conduit in the nozzle body for delivering product from the base portion to the dispensing end;

(iii) engaging formations on the nozzle for inter-engaging with co-operating engaging formations on a cap, to hold the cap in a position over-fitting the nozzle; and

(iv) first and second external ramps are provided longitudinally spaced apart on the nozzle body and against which a co-operating portion on the cap may act by relative rotation of the cap and the nozzle in at least one direction, to provide sufficient relative separation force between the cap and the nozzle body, to separate the engaging formations on the cap and the nozzle from an inter-engaged position, where the first and second external ramps each comprise a ramping surface oblique to the direction of rotation of the cap.

The longitudinally spaced apart ramps on the nozzle/ramp co-operating portions on the cap allow for facile removal of a cap from the nozzle even when they have become fouled, for example when bonded together with adhesive. This arrangement of longitudinal ramp co-operating portions is not disclosed, taught or suggested by Montenieri.

The Action asserts at page 2 that Montenieri in FIGS. 1-22 shows "a package 20 that holds curable cyanoacrylate glue in a chamber 35 that is integrally formed with a dispensing

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nozzle 25 with a dispensing orifice 24, guide ribs 26, a shoulder 34 that has two opposite ramping surfaces 50 that are formed with two opposite horizontal lock members 28 that work in conjunction with a cap 15 that four long internal ribs 55, 58, the two wider spaced ribs 55 are situated that with a 30 degree turn or less, climb up the raised ramps 29, 50 and the closer spaced internal ribs 58 have slots 59 that serve to lock the cap 15 on the nozzle 25 when the cap 15 is closed upon the nozzle 25 with a guide pin 40 that closes the dispensing orifice 24, the cap 15 engages by a push fit manner that is then secured by a twist to lock on the horizontal locks 28 of the cap 15, the nozzle 25 can have two snap fit retaining nibs 45 (see figure 18) to even better hold the cap in place during storage."

However, this assertion is misplaced.

Montenieri is directed to and claims a package, for storing and dispensing liquids, of the type in which a body comprising a nozzle with an orifice, and a chamber having a top surface from which the nozzle extends, has a cap which fits snugly over the nozzle, the cap also having an interior pin which fits into the orifice of the nozzle, keeping the nozzle from clogging.

Montenieri's improvement is defined as a closure mechanism comprising: (a) at least one guide flange located at a

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base of the nozzle, the flange further comprising a horizontal lock member and a vertical guide member, the vertical guide member perpendicular to the horizontal lock member, the vertical guide member having a lower raised ramp member, a guide surface defined by the raised ramp member and an adjoining face of the vertical guide member, and a stop surface defined by an opposite face of the vertical guide member; (b) the cap having a lower portion with a first recess and an upper portion with a second recess, the first recess having a larger diameter than the second recess; (c) at least one stopping member in the lower portion of an interior of the cap, the stopping member extending throughout the lower portion, parallel to an axis of the body, further comprising a parallel vertical edge which extends along the entire length of the stopping member, the stopping member located in a configuration such that when the cap is placed in a fully closed position on the body, the vertical edge abuts the stop surface of the vertical guide member preventing the cap from over rotating on the body; and (d) at least one band member in the lower portion of the interior of the cap, the band extending throughout the lower portion of the cap, parallel to the axis of the body, the band member further comprising a slot dividing the band member into an upper portion and a lower portion, the slot located at about the same height as the

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horizontal lock member when the cap is placed in a fully closed position on the body and the slot having a width slightly larger than the width of the horizontal member of the guide flange such that when the cap is placed in the fully closed position, the horizontal lock member extends through the slot, the lower portion of the band member extending from an end of the slot to a bottom of the cap; such that to open the package, the cap is twisted about the axis of the package, retracting the horizontal locking member from the slot, until the lower portion of the band member touches and travels up the ramp member and the guide surface of the vertical guide member, disengaging the pin from the orifice and causing the removal of the cap from the body.

It is well settled that in order to be an effective anticipatory reference, a single document must disclose each and every recitation of a claim under review. Verdegaal Bros., Inc. v. Union Oil Co., 814 F.2d 628, 631 (Fed. Cir. 1987).

The Court of Appeals for the Federal Circuit has recently discussed the requirements of Section 102 anticipation.

[u]nless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. § 102. Net Moneyin, Inc. v. Verisign, Inc., 545 F.3d 1359, 1371 (Fed. Cir. 2008).

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Thus, failing such precise disclosure as required for an effective anticipatory reference, rejections under Section 102 are improper. Here, in part due to the amendments introduced herein and in part because Montenieri does not possess such disclosure, the Action has not established a proper Section 102 rejection based on Montenieri. Accordingly, Applicants request reconsideration and withdrawal of the Section 102(b) rejections.

Section 103 Rejections

Claim 17 stands rejected under 35 U.S.C. § 103(a), as allegedly being unpatentable over Montenieri and further in view of U.S. Patent No. 3,982,651 (Braun), for the reasons given in the Action at page 3, paragraphs 6-7.

Applicants traverse the Section 103 rejections.

Montenieri is discussed and contrasted above.

The Action acknowledges that Montenieri is deficient and for that reason turns to Braun.

Braun is directed to a container and closure cap therefor, with the container having an open top, a continuous sinuous surface adjacent to the open top, with the sinuous surface including alternately equally spaced rounded projections, merging into adjacent alternately equally spaced

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rounded recesses and all parts of the sinuous surface being normal to the longitudinal axis of the container, a closure cap for the container, with the container having a depth greater than the depth of the closure cap, with the closure cap having a skirt and an open bottom, a continuous sinuous surface on the skirt, with the continuous sinuous surface on the skirt including alternately equally spaced rounded projections merging into alternately equally spaced adjacent rounded recesses. This sinuous surface is shaped complementary to the container sinuous surface, with all parts of this sinuous surface being normal to the longitudinal axis of the closure cap, with the closure cap sinuous surface adapted to engage the container sinuous surface with the rounded projections of one positioned in the rounded recesses of the other when the closure cap is in closing position. The closure cap has a short annular wall portion offset inwardly of its respective sinuous surface, with the short annular offset wall position having an annular bead at the bottom edge thereof and the container having an annular groove to be engaged by the bead when the closure cap is secured to the container. The short annular offset wall portion of the closure cap has an annular free edge which is in close proximity to its respective sinuous surface. The short annular offset wall of the closure cap is adapted to interfit within the container

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adjacent its sinuous surface to secure the closure cap to the container, the sinuous surfaces of the closure cap and container when in abutting engagement presenting a uniform exterior surface for the closure cap and container at the abutting engagement. Rotation of the closure cap with respect to the container causes the projections of the sinuous surface of the closure cap to move out of the recesses of the container to dislodge the closure cap for the container.

In contrast, the present invention as defined by Claim 17 is directed to a nozzle a dispensing nozzle comprising:

- (i) an elongate nozzle body having a base portion and a dispensing end;
- (ii) an internal conduit in the nozzle body for delivering product from the base portion to the dispensing end;
- (iii) engaging formations on the nozzle for inter-engaging with co-operating engaging formations on a cap, to hold said cap in a position over-fitting the nozzle; and
- (iv) first and second external ramps are provided longitudinally spaced apart on the nozzle body and against which a co-operating portion on the cap may act by relative rotation of the cap and the nozzle in at least one direction, to provide sufficient relative separation force between the cap and the nozzle body, to separate the engaging formations on the cap and

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the nozzle from an inter-engaged position, where the first and second external ramps each comprise a ramping surface oblique to the direction of rotation of the cap.

Neither Montenieri nor Braun disclose, teach or suggest, or provide motivation to reach, the so-defined invention.

Thus, it is only the subject application which defines a dispensing nozzle in such a manner to provide a nozzle and cap arrangement which addresses the problem of difficulty in opening the cap when the arrangement is contaminated with product and also to reduce costs in the materials being employed, in particular by reducing the amounts of materials being employed, and also by reducing the assembly costs during manufacture.

Since Claim 17 depends from and thus incorporates all of the recitations of Claim 1 and for the reasons set forth above, this Section 103 rejection should be reconsidered and withdrawn.

To establish a *prima facie* case of obviousness, there must be some reason, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727, 1741 (2007). Moreover, the cited reference (or references when

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combined) must teach or suggest all the claim limitations. The reason to make the claimed combination, and a reasonable expectation of success, must be found elsewhere than in Applicants' own disclosure, such as in the cited reference, the nature of the problem to be solved, or in the knowledge/understanding of the person of ordinary skill in the art. MPEP § 2143; In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Applicants submit, however, that the instant rejection does not meet these requirements.

In KSR, the Court found that in the determination of whether a claimed invention is obvious the teaching/suggestion/motivation test cannot be applied in a rigid manner. Rather, as the Board of Patent Appeals and Interference recently recognized:

The Court did not, however, discard the TSM test completely; it noted that its precedents show that an invention "composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art." Ex Parte Whalen at 15.

The KSR Court noted that obviousness cannot be proven merely by showing that the elements of a claimed device were known in the prior art; it must be shown that those of ordinary skill in the art would have had some "apparent reason to combine the known elements in the fashion claimed." Ex Parte Whalen at 16. See also Ex Parte Gras-Masse, Appeal 2006-2733 (BPAI July 21, 2008).

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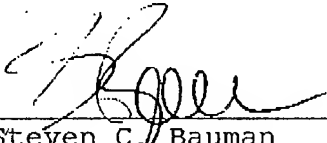
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Applicants submit therefore that when viewed in this proper legal setting, the Section 103 rejection cannot stand and should be withdrawn.

Applicants' undersigned attorney may be reached by telephone at (860) 571-5001, by facsimile at (860) 571-5028 or by email at steve.bauman@us.henkel.com. All correspondence should be directed to the address given below.

Respectfully submitted,



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